

TRANSMITTAL SLIP		DATE 11/13/81
TO: [REDACTED]		
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ROOM NO.	BUILDING	
REMARKS:		
ILLEGIB [REDACTED] <div style="border: 1px solid black; border-radius: 50%; padding: 10px; display: inline-block;"> File DQ Test FOIA </div>		
FBI review completed STAT [REDACTED]		
FROM: [REDACTED]		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241
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REPLACES FORM 36-8
WHICH MAY BE USED.

(47)



U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

STATEMENT OF

DIRECTOR

WILLIAM H. WEBSTER

FEDERAL BUREAU OF INVESTIGATION

BEFORE THE

SUBCOMMITTEE ON THE CONSTITUTION

SENATE JUDICIARY COMMITTEE

UNITED STATES SENATE

NOVEMBER 12, 1981

FBI review completed

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE

I LAST TESTIFIED BEFORE A CONGRESSIONAL COMMITTEE ABOUT THE FREEDOM OF INFORMATION ACT ON FEBRUARY 28, 1979. DURING THAT APPEARANCE I DESCRIBED SOME OF THE PROBLEMS WHICH THE ACT POSES FOR THE FBI.

IN RESPONSE TO REQUESTS FROM SEVERAL OF OUR OVERSIGHT COMMITTEES, I PREPARED SOME PROPOSED AMENDMENTS TO THE ACT, AND WITH THE PERMISSION OF THEN ATTORNEY GENERAL BELL, SENT THEM TO THOSE COMMITTEES WITH OVERSIGHT RESPONSIBILITIES.

ALL THE WHILE THE BUREAU WORKED CLOSELY WITHIN THE DEPARTMENT OF JUSTICE. JUDGE BELL INITIATED A GOVERNMENT-WIDE STUDY OF THE ACT. WE PARTICIPATED IN THAT UNDERTAKING.

THEN WE WORKED WITH MR. CIVILETTI AND HIS STAFF AS THEY PREPARED PROPOSALS TO AMEND THE ACT.

WE CONTINUED TO WORK WITHIN THE DEPARTMENT AFTER THE CHANGE OF ADMINISTRATION AS THOSE NEWLY ELECTED OR APPOINTED TO OFFICE STUDIED THE MATTER AND DRAFTED THE PROPOSALS ASSISTANT ATTORNEY GENERAL ROSE PRESENTED TO THIS SUBCOMMITTEE A FEW WEEKS AGO.

ALL THAT TIME AND EFFORT IS AN INDICATION OF HOW SERIOUS A MATTER I THINK THE PROBLEM IS. I AM PLEASED THAT YOU ARE HOLDING THESE HEARINGS AND THAT YOU HAVE INVITED ME TO TESTIFY.

OTHERS SHOULD BE PLEASED AS WELL. WE NEED LOOK NO FURTHER THAN COURT DECISIONS REPORTED IN THE PAST FEW YEARS

TO SEE THAT MEMBERS OF THE JUDICIARY HAVE SUGGESTED CONGRESS SHOULD TAKE ANOTHER LOOK AT THE ACT.

THE AUGUST 17, 1981, REPORT OF THE ATTORNEY GENERAL'S TASK FORCE ON VIOLENT CRIME, CHAIRED BY FORMER ATTORNEY GENERAL GRIFFIN B. BELL AND GOVERNOR JAMES R. THOMPSON, RECOMMENDED THAT THE "ATTORNEY GENERAL...SEEK AMENDMENTS TO THE FREEDOM OF INFORMATION ACT TO CORRECT THOSE ASPECTS THAT IMPEDE CRIMINAL INVESTIGATION AND PROSECUTION AND TO ESTABLISH A MORE RATIONAL BALANCE AMONG INDIVIDUAL PRIVACY CONSIDERATIONS, OPENNESS IN GOVERNMENT, AND THE GOVERNMENT'S RESPONSIBILITY TO PROTECT CITIZENS FROM CRIMINAL ACTIVITY."

MR. CHAIRMAN IN MY JUDGMENT ATTORNEY GENERAL SMITH
HAS ADDRESSED MANY OF THE PROBLEMS WHICH HAVE BEEN
IDENTIFIED.

DISAGREEMENT OVER THE NATURE AND DEGREE OF THE
CHANGES TO BE MADE IS TO BE EXPECTED. SOME WILL MAINTAIN THE
PROPOSALS GO TOO FAR; OTHERS WILL ARGUE THEY DO NOT GO FAR
ENOUGH.

A COMPARISON OF MR. CIVILETTI'S PROPOSALS WITH
THOSE BEFORE US TODAY REVEALS ONE FACT ABOUT WHICH THERE
SHOULD BE NO DISAGREEMENT: CHANGE IS NECESSARY.

✓ THE FORMER ATTORNEY GENERAL AND THE PRESENT
ADMINISTRATION AGREE THAT CHANGES ARE NEEDED. BOTH AGREE
SPECIAL PROTECTION SHOULD BE AFFORDED RECORDS PERTAINING TO
FOREIGN COUNTERINTELLIGENCE, ORGANIZED CRIME AND TERRORISM.

BOTH AGREE CONFIDENTIAL SOURCES NEED ADDITIONAL SAFEGUARDS.

BOTH AGREE THE TIME LIMITS SHOULD BE ADJUSTED. BOTH ARE SO SIMILAR AND CONSISTENT NOT ONLY IN THE IDENTIFICATION OF PROBLEMS BUT ALSO IN RECOMMENDED SOLUTIONS THAT IT IS CLEAR THE ISSUE BEFORE US IS WHAT ADJUSTMENTS TO THE ACT SHOULD BE MADE IN THE LIGHT OF REASON AND EXPERIENCE.

I WOULD LIKE TO ADDRESS THE PROVISIONS FOR EXPANDING PROTECTION FOR SOURCES AND REMOVING RECORDS PERTAINING TO FOREIGN COUNTERINTELLIGENCE, ORGANIZED CRIME AND TERRORISM - THE MOST SENSITIVE INFORMATION WE HAVE - FROM THE MANDATORY DISCLOSURE PROVISIONS OF THE ACT.

MOST OF OUR FOREIGN COUNTERINTELLIGENCE, ORGANIZED CRIME AND TERRORISM INVESTIGATIONS ARE DETAILED AND EXTENSIVE. AS A RESULT THEY ARE MORE VULNERABLE TO ANALYSIS

BY THOSE WHO HAVE SOMETHING TO GAIN FROM TRYING TO IDENTIFY SOURCES AND TO ASCERTAIN THE SCOPE AND LIMITATIONS OF OUR EFFORTS. GROUPS OF INDIVIDUALS ARE FREE TO POOL OUR RELEASES AND SUBJECT THEM TO DETAILED ANALYSIS.

IN THESE HIGHLY SENSITIVE CASES EVEN ACKNOWLEDGING THE ABSENCE OF INFORMATION IN OUR FILES CAN BE DAMAGING. THE LACK OF INVESTIGATIVE ACTIVITY IN A PARTICULAR PLACE WITHIN A CERTAIN TIME FRAME ANNOUNCES WE HAVE NO KNOWLEDGE OF WHAT TRANSPIRED THERE. MOREOVER, INFORMATION THAT IS RELEASED CAN FORM A BLUEPRINT OF THE BUREAU'S INVESTIGATION AND TECHNIQUES. WHEN IT IS NECESSARY TO REINSTITUTE THE INVESTIGATION, THE TARGET IS FORWARDED AND FOREARMED.

FINALLY, THE VIOLENCE AND RISK OF REPRISAL IN THESE AREAS ARE SUFFICIENTLY GREAT TO INCREASE THE IMPACT ON INFORMANTS WHOSE PERCEPTION IS THAT WE MAY NOT BE ABLE TO PROTECT THEIR IDENTITY.

YOU MAY BE INTERESTED TO KNOW WHAT WE HAVE RELEASED IN RESPONSE TO FREEDOM OF INFORMATION ACT REQUESTS OVER 60,000 PAGE OF FBI DOCUMENTS CONCERNING THE WEATHER UNDERGROUND TO A WEST COAST ATTORNEY WHO REPRESENTS INDIVIDUALS CONNECTED WITH THAT ORGANIZATION. OF THOSE ARRESTED IN CONNECTION WITH THE MURDER OF TWO POLICE OFFICERS AND A BRINKS GUARD, TWO HAVE FREEDOM OF INFORMATION ACT LAWSUITS PENDING AGAINST THE FBI RIGHT NOW.

WHEN WE PROCESSED DOCUMENTS FOR THE WEATHER UNDERGROUND, WE REVIEWED THEM CAREFULLY AS WE REVIEW ALL DOCUMENTS CAREFULLY BEFORE WE RELEASE THEM. WE DO OUR BEST TO APPLY THE EXEMPTIONS TO THE FULLEST EXTENT OF THE LAW. IF THE INFORMATION CAME FROM A FOREIGN GOVERNMENT, WE DELETE IT. IF IT WAS PROVIDED TO US IN CONFIDENCE BY A LOCAL OR STATE POLICE OFFICER OR DEPARTMENT, WE DELETE IT. IF IT WAS FURNISHED BY AN INFORMANT, WE DO NOT RELEASE IT.

THE FOIA PERMITS THE FBI AND OTHER LAW ENFORCEMENT AGENCIES TO WITHHOLD INFORMANT'S REPORTS, BUT OTHER INFORMATION IN THE FILE CAN BE WITHHELD ONLY IF WE CAN DEMONSTRATE IT WOULD IDENTIFY A SOURCE - NOT IF IT WOULD TEND TO IDENTIFY THE SOURCE BUT ONLY IF IT WOULD IDENTIFY A SOURCE. APPLYING THE EXEMPTION NECESSITATES THAT HUMAN BEINGS MAKE JUDGMENT CALLS. IT IS OUR TASK TO REVIEW THOUSANDS OF PAGES LINE BY LINE, WORD BY WORD, TO DETERMINE WHAT INFORMATION, IF RELEASED, WOULD IDENTIFY A SOURCE. THERE IS NO LITMUS PAPER TEST. WE HAVE TO MAKE THE DECISION AND IN MAKING THAT JUDGMENT WE DO NOT KNOW, CANNOT KNOW AND HAVE NO WAY OF KNOWING WHAT THE RECIPIENTS OF OUR RELEASES ALREADY KNOW. THUS, IT IS IMPOSSIBLE TO CONCLUDE WITH CERTAINTY THAT WE ARE ALWAYS CORRECT.

THE FBI DOES NOT KNOW AND HAS NO WAY OF KNOWING WITH CERTAINTY TO WHAT EXTENT THOSE 60,000 PAGES OF FBI DOCUMENTS ASSISTED THOSE INVOLVED IN THE RECENT BRINKS ROBBERY. WE DO KNOW TWO OF THOSE APPREHENDED HAD RECEIVED DOCUMENTS AND WERE SUING US UNDER FOIA FOR MORE INFORMATION.

MY EFFORTS TO REPORT TO CONGRESS THE PROBLEMS THE ACT IS CAUSING THE FBI HAVE BEEN CRITICIZED BY SOME AS CAUSING SOURCES TO FEAR THEIR IDENTITIES WILL BE DISCLOSED, THUS EXACERBATING THE PROBLEM THE FBI HAS EXPERIENCED. OTHERS HAVE ARGUED AT THE SAME TIME THAT WE MUST PUT MORE EVIDENCE OF HARM CAUSED BY THE ACT ON THE RECORD IF WE ARE TO JUSTIFY CHANGE. OBVIOUSLY, IT IS VERY DIFFICULT TO BOTH BUILD A RECORD FOR CHANGE AND PREVENT THE AGGRAVATION OF THE SERIOUS PROBLEMS WE ARE EXPERIENCING AMONG OUR INFORMATION SOURCES. I CAN ONLY NOTE THAT WE HAVE ALWAYS

ATTEMPTED TO BUILD OUR CASE IN A RESPONSIBLE FASHION,
CONSISTENT WITH OUR RESPONSIBILITIES TO OUR SOURCES AND
WITHOUT ATTEMPTING TO OVERSTATE OR OVERDRAMATIZE THE PROBLEM.
WE HAVE BEEN AND REMAIN VERY AWARE OF THE LIMITATIONS ON WHAT
CAN BE STATED PUBLICLY WITHOUT COMPROMISING IMPORTANT LAW
ENFORCEMENT INTERESTS.

I DO WANT TO STATE PUBLICLY IT IS MY FIRM
CONVICTION THAT FOREIGN COUNTERINTELLIGENCE, ORGANIZED CRIME
AND TERRORISM INFORMATION SHOULD BE REMOVED FROM THE
MANDATORY DISCLOSURE PROVISIONS OF THE ACT. THE STAKES ARE
TOO HIGH; THE RISK TOO GREAT. OUR ACCOUNTING IN THESE
SENSITIVE AREAS SHOULD BE MADE NOT TO THE WORLD, BUT TO THE
PEOPLE'S REPRESENTATIVES IN THE CONGRESS.

CRITICISM OF THIS PROPOSAL APPEARS TO FOCUS ON TWO
ISSUES. THE FIRST IS WHETHER THE ATTORNEY GENERAL OR THE
CONGRESS SHOULD DEFINE FOREIGN COUNTERINTELLIGENCE, ORGANIZED

CRIME AND TERRORISM. THE SECOND IS WHETHER THE PROPOSAL WOULD PERMIT THE FBI NOT ONLY TO RESSURRECT THE OLD COUNTER-INTELLIGENCE PROGRAM (COINTELPRO), BUT ALSO TO HIDE THE EVIDENCE FROM THE AMERICAN PEOPLE SIMPLY BY PLACING ANY DOCUMENT WE WISHED TO HIDE IN A FOREIGN COUNTER-INTELLIGENCE, ORGANIZED CRIME OR TERRORISM FILE.

I DO NOT SEE ANY GREAT CONTROVERSEY ARISING OVER THE QUESTION OF WHO SHOULD DEFINE THE TERMS.

I PROFFERED DEFINITIONS MYSELF IN MY PACKAGE OF PROPOSALS WHICH I SENT TO YOU IN JUNE, 1979.

BECAUSE ATTORNEY GENERAL REGULATIONS AND ORDERS CAN BE MORE FLEXIBLE THAN STATUTES, THE ADMINISTRATION PROPOSAL WOULD PERMIT THE ATTORNEY GENERAL TO DEFINE THE THREE TERMS.

IT SHOULD BE NOTED THAT TITLE 28, CODE OF FEDERAL REGULATIONS, SECTION 50.8, WILL REMAIN IN EFFECT. THIS SECTION PROVIDES FOR ACCESS TO FILES OF HISTORICAL INTEREST. INCIDENTALLY, WE WERE PROCESSING THOUSANDS OF PAGES FOR RELEASE UNDER THIS SECTION WHEN THE ACT WAS AMENDED IN 1974.

IF THE COMMITTEE HAS RESERVATIONS ABOUT THE PRESENT OR POTENTIAL SCOPE OF THIS PROPOSAL, WE WOULD BE WILLING TO WORK WITH THE COMMITTEE IN DEFINING THESE TERMS.

WHAT IS ESSENTIAL, IN MY VIEW, IS THAT CONGRESS CONCLUDE, AS DID BOTH FORMER ATTORNEY GENERAL CIVILETTI AND THIS ADMINISTRATION, THAT THESE THREE SPECIES OF INVESTIGATIONS MERIT SPECIAL PROTECTION.

LET ME SPEAK NOW TO THOSE WHO ARE CONCERNED THAT THIS PROPOSAL WOULD PERMIT THE USE OF THE ACT TO CONCEAL

ILLEGAL CONDUCT OR ACTIVITIES. I CAN ASSURE YOU IT WILL NOT.

IT IS DEPARTMENT OF JUSTICE POLICY THAT THE FREEDOM OF INFORMATION ACT EXEMPTIONS CANNOT BE USED TO WITHHOLD EVIDENCE OF ILLEGAL OR IMPROPER CONDUCT. THERE WILL BE NO CHANGE IN THAT POLICY WHETHER OR NOT THIS BILL BECOMES LAW.

THE COURTS HAVE MADE CLEAR THAT AN AGENCY CAN NOT APPLY THAT ACT'S EXEMPTIONS TO INCRIMINATING EVIDENCE. THOSE JUDICIAL DECISIONS WILL BE UNAFFECTED BY CONGRESSIONAL ACTION ON THE BILL.

FURTHERMORE, THIS BILL DOES NOT CREATE AN ABYSS INTO WHICH ALL OUR FOREIGN COUNTERINTELLIGENCE, ORGANIZED

CRIME, AND TERRORISM RECORDS WOULD FALL NEVER TO SEE THE
LIGHT OF DAY.

THE BILL WOULD NOT PERMIT THE FBI TO PLACE A FILE
BEYOND THE REACH OF THE FREEDOM OF INFORMATION ACT BY
STAMPING "ORGANIZED CRIME" ON THE FILE COVER. WE WOULD BE
REQUIRED, AS WE ARE TODAY, TO REVIEW EACH AND EVERY DOCUMENT
IN THAT FILE. THEN WE WOULD HAVE TO MAKE A DETERMINATION
WHETHER THE INFORMATION IN THOSE DOCUMENTS MET THE CRITERIA
ESTABLISHED FOR ORGANIZED CRIME INFORMATION. FOR EACH AND
EVERY ITEM OF INFORMATION WE CONCLUDED DID MEET THAT
STANDARD, WE WOULD BE COMPELLED TO NOTIFY THE REQUESTER OF
OUR DETERMINATION THAT EXEMPTION (B)(7)(G) JUSTIFIED OUR
WITHHOLDING THAT INFORMATION.

UNDER THE BILL, THE REQUESTER RETAINS HIS EXISTING RIGHT TO DEMAND A DE NOVO REVIEW WITHIN THE DEPARTMENT OF JUSTICE OF ALL OUR INTERNAL DETERMINATIONS. THAT MEANS A DEPARTMENT OF JUSTICE ATTORNEY WOULD EXAMINE ALL THE INFORMATION WE WERE WITHHOLDING UNDER THE ORGANIZED CRIME EXEMPTION.

THE BILL ALSO CAREFULLY PRESERVES THE REQUESTER'S EXISTING RIGHT TO BRING SUIT IN U. S. DISTRICT COURT AND TO HAVE THE COURT CONSIDER THE ENTIRE MATTER DE NOVO. AS IS THE CASE TODAY, THE COURT AT ITS SOLE DISCRETION COULD REVIEW ALL THE FILES AND ALL THE DOCUMENTS.

I WOULD LIKE TO EMPHASIZE AS STRONGLY AS I KNOW HOW THAT THIS BILL DOES NOT CHANGE OR RESTRICT IN ANY WAY THE EXISTING POWER OF A COURT TO EXAMINE FBI DOCUMENTS. WHILE THE ADMINISTRATION PROPOSAL WOULD AFFECT THE GOVERNMENT'S

BURDEN IN PROVING A CLASSIFICATION DETERMINATION, THE PROPOSAL WOULD NOT LIMIT THE POWER OF A COURT TO EXAMINE DOCUMENTS. WHATEVER A COURT CAN SEE TODAY, IT COULD SEE THE DAY AFTER THIS BILL IS ENACTED INTO LAW.

ADDITIONAL SAFEGUARDS EXIST AS WELL.

THE PRIVACY ACT OF 1974 STRICTLY CONTROLS THE FBI'S COLLECTION, MAINTENANCE AND USE OF INFORMATION ABOUT INDIVIDUALS. THAT STATUTE PROHIBITS, AMONG OTHER THINGS, DISSEMINATING INFORMATION ABOUT AN INDIVIDUAL WITHOUT THAT INDIVIDUAL'S WRITTEN PERMISSION UNLESS THE DISSEMINATION IS MADE PURSUANT TO ONE OF THE NARROWLY DRAWN EXEMPTIONS TO THE ACT INCLUDING THE ROUTINE USE PROVISION. THE FBI IS REQUIRED BY THE ACT TO PUBLISH IN THE FEDERAL REGISTER ALL ITS ROUTINE USES OF INFORMATION. CIVIL AND CRIMINAL SANCTIONS PUT TEETH IN THESE RESTRICTIONS.

MOREOVER, WE CAN ALL AGREE THAT CONGRESSIONAL OVERSIGHT OF FBI OPERATIONS FAR EXCEEDS IN SCOPE AND INTENSITY WHAT IT WAS A FEW YEARS AGO. THE SENATE AND HOUSE APPROPRIATIONS, JUDICIARY, INTELLIGENCE AND GOVERNMENTAL AFFAIRS COMMITTEES REGULARLY EXERCISE OVERSIGHT RESPONSIBILITIES OVER THE FBI. THERE ARE MANY OTHER COMMITTEES AND SUBCOMMITTEES WHICH REVIEW FBI OPERATIONS ON AN AD HOC BASIS.

I PERSONALLY HAVE APPEARED AND TESTIFIED BEFORE CONGRESSIONAL COMMITTEES AT LEAST 39 TIMES SINCE I BECAME DIRECTOR IN 1978. DURING THAT SAME TIME FBI OFFICIALS TESTIFIED ON 92 OCCASIONS. FURTHER FBI REPRESENTATIVES HAVE PROVIDED MANY INFORMAL BRIEFINGS FOR MEMBERS OF OUR OVERSIGHT COMMITTEES OR THEIR STAFF AND HAVE RESPONDED TO NUMEROUS WRITTEN REQUESTS FOR INFORMATION.

THE GENERAL ACCOUNTING OFFICE HAS CONDUCTED SEVERAL STUDIES OF VARIOUS FBI PROGRAMS. IT HAS UNDERTAKEN MORE THAN ONE REVIEW OF OUR FOIA OPERATIONS. ONE SUCH STUDY TOOK MORE THAN A YEAR TO COMPLETE.

THE POINT I AM EMPHASIZING IS THAT THERE IS EXTENSIVE OVERSIGHT OF THE FBI. THERE EXIST TODAY INTERNAL CONTROLS AND OVERSIGHT WITHIN THE DEPARTMENT OF JUSTICE ITSELF. THIS BILL WOULD CHANGE NEITHER. THERE EXISTS LEGISLATION WITH CIVIL AND CRIMINAL SANCTIONS WHICH CONTROLS THE FBI'S COLLECTION, MAINTENANCE AND USE OF INFORMATION. THIS BILL WOULD NOT CHANGE THAT. THERE EXISTS JUDICIAL OVERSIGHT. THIS BILL WOULD NOT CHANGE THAT. THERE EXISTS VIGOROUS CONGRESSIONAL OVERSIGHT OF THE FBI. THIS BILL WOULD NOT CHANGE THAT.

BEFORE FEARS OVER IMPROPRIETIES COULD BE TRANSFORMED INTO REALITY, THERE WOULD HAVE TO BE A TOTAL AND SIMULTANEOUS BREAKDOWN OF ALL THE EXISTING CHECKS AND BALANCES IN THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES OF THE FEDERAL GOVERNMENT.

MR. CHAIRMAN, THESE PROPOSALS WILL NOT SOLVE ALL OUR PROBLEMS WITH THE ACT. THEY WOULD PROTECT MANY LEGITIMATE LAW ENFORCEMENT INTERESTS WHILE CAREFULLY PRESERVING EXISTING SAFEGUARDS AND INSURING THAT THE PEOPLE WILL HAVE ALL THE INFORMATION THE SECURITY OF THE NATION PERMITS.

THESE PROPOSALS SHOULD BE ENACTED INTO LAW.